

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELVIN GENAO,

Plaintiff,

-against-

ST. NICHOLAS HOUSING
DEVELOPMENT; SARA SANTANA,

Defendants.

19-CV-2477 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff filed this action *pro se*. By order dated May 2, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). The Court dismisses the complaint for the reasons set forth below.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted).

BACKGROUND

Plaintiff brings this action, styled as a criminal complaint, seeking criminal charges against Defendant St. Nicholas Housing Development. Attachment to the complaint is a “10 Day

Notice to Quit,” arising out of a holdover proceeding regarding an apartment located at 237 West 127 Street Apartment 14C in Manhattan. The complaint states:

Stalking 1st deg, aggravated harassment 1st deg, cyber stalking, malicious prosecution 1st deg, slander, defamation of character, heresy, collusion, computer hacking, criminal threats 1st deg, economic espionage act/theft of trade secrets/intellectual property crimes/securities and commodities fraud/identity theft, domestic terrorism, obstruction of justice 1st deg, Amendment V, VI, VIII, XVI, Rome statute, pursuit of happiness.

(ECF No. 1 at 1.)

After Plaintiff filed this complaint, he filed an amended complaint and another criminal complaint. He adds Sara Santana or Sara Turner as a Defendant, and he assert similar claims.

(ECF Nos. 5, 6.) Attached to the amended complaint is a decision from the New York State Division of Human Rights (NYSDHR) regarding an administrative complaint that Plaintiff filed against the New York City Housing Authority. (ECF No. 4 at 2-3.) The NYSDHR found no probable cause to support Plaintiff’s claim that NYCHA was engaging in discriminatory practices. (*Id.*)

Beginning in 2018, Plaintiff has filed 21 complaints in this Court. *See Genao v. St. Paul’s Church*, No. 19-CV-2704 (CM) (S.D.N.Y. May 7, 2019) (dismissing complaint for failure to state a claim and ordering Plaintiff to show cause why he should not be barred under 28 U.S.C. § 1651 from filing any further actions in this Court IFP without first obtaining permission from this Court to file his complaint).¹

DISCUSSION

Plaintiff cannot initiate the arrest and prosecution of an individual or entity in this Court because private citizens cannot prosecute criminal actions in federal court. *See Leeke v. Timmerman*, 454 U.S. 83, 86-87 (1981) (prisoners lack standing to seek the issuance of an arrest

¹ That order also listed Plaintiff’s other cases, at least six of which were dismissed for failure to state a claim or for failure to either submit an IFP application or pay the filing fee:

warrant); *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”). Plaintiff also cannot direct prosecuting attorneys to initiate a criminal proceeding because prosecutors possess discretionary authority to bring criminal actions, and they are “immune from control or interference by citizen or court.” *Conn. Action Now, Inc. v. Roberts Plating Co.*, 457 F.2d 81, 87 (2d Cir. 1972).

To the extent Plaintiff seeks relief under 42 U.S.C. § 1983, he fails to state a claim because he must allege facts showing that the defendant acted under the color of a state “statute, ordinance, regulation, custom or usage.” *Id.* Private parties are not generally liable under the statute. *Sykes v. Bank of America*, 723 F.3d 399, 406 (2d Cir. 2013) (citing *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001)); *see also Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (“[T]he United States Constitution regulates only the Government, not private parties.”). As Defendants are a private individual and a private entity, Plaintiff cannot state § 1983 claims against them.

Accordingly, the Court dismisses the action for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff’s complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend his complaint.

CONCLUSION

The Clerk is directed to mail a copy of this order to Plaintiff and note service on the docket. The complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a), is dismissed for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

SO ORDERED.

Dated: May 22, 2019
New York, New York



COLLEEN McMAHON
Chief United States District Judge